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SUBJECT: EL SALVADOR: 2010 SPECIAL 301 INPUT

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**¶11.** (U) SUMMARY. El Salvador continues to comply with CAFTA-DR and TRIPS IPR obligations and improve IPR protection. The GOES implemented data protection regulations for agricultural chemicals in 2009, its last outstanding CAFTA-DR IPR obligation. Stronger enforcement efforts started in 2008 have continued through 2009. Post therefore recommends against including El Salvador in the Special 301 report. END SUMMARY.

#### LEGAL FRAMEWORK/DATA PROTECTION/TREATIES

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**¶12.** (U) El Salvador has implemented legislation and acceded to IPR treaties as required by Chapter 15 of CAFTA-DR. Additionally, El Salvador acceded to both the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and Performances and Phonograms Treaty (WPPT) in 1998, and the WIPO Trademark Law Treaty in 2008.

**¶13.** (U) El Salvador implemented data protection for pharmaceutical products in 2008. According to IPR lawyers, some government officials, particularly in the Superior Council for Public Health (CSSP), still do not fully understand the difference between data exclusivity and general patent protection. El Salvador implemented data protection for agricultural chemical products in 2009, its last outstanding CAFTA-DR IPR obligation.

#### ENFORCEMENT

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**¶14.** (U) El Salvador continued the stronger enforcement efforts started in 2008 through 2009. Salvadoran police arrested 152 people on IPR-related charges. The Attorney General's office investigated 163 IPR-related cases, 115 of which were initiated ex-officio.

**¶15.** (U) Optical media piracy remains a major concern. Police confiscated 914,468 units of optical media, not including software, in 2009 (compared to 938,311 in 2008) and shut down 19 laboratories (compared to 20 in 2008), arresting 26 and seizing 759 disc burners. The Attorney General's office opened 128 cases related

to music or movie piracy.

**¶16. (U)** Police seized 24,126 units of counterfeit medicine and 4,757 units of counterfeit vitamins. Police likewise seized 183 pairs of shoes and 11,048 counterfeit clothing items, primarily Lacoste brand, which the police say are made in neighboring Guatemala.

7 (SBU) According to Karla Ponce, the main IPR attorney in the Attorney General's Office, her office has seen an increased number of cases withdrawn in the past year after one industry's complainant was reportedly threatened with violent reprisal, including death threats.

**¶18. (U)** The judiciary continues to be the weak link in criminal IPR enforcement, with lack of knowledge about IPR issues and laws and inconsistent enforcement. According to the American Chamber of Commerce's (AMCHAM) IPR committee, the Supreme Court has promised to set up a special "IPR court" with trained judges. The 2010 budget request for the judiciary, however, did not include the necessary funding.

#### BUSINESS VIEWS

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**¶19. (U)** AMCHAM's Executive Director Carmen Aida Munoz and IPR Committee Chair Carlos Castillo view IPR as "one of the bright spots" with the current government. Even though most personnel had changed, they said cooperation remained excellent between the private sector and the police. The Attorney General's office was also responsive, though they expressed concern about reduced staffing and the ability of the attorneys to handle the workload. While they recognized the GOES's other serious crime problems like murder and extortion had priority, they nevertheless lamented the lack of resources devoted to IPR.

**¶110. (SBU)** Munoz (protect) told Econoff that PhRMA's Special 301 positions were widely discussed during a January Association of American Chambers of Commerce in Latin America (AACCLA) meeting. Several companies, she said, had unsuccessfully pushed to drop El Salvador from PhRMA's recommended list. The real reason for PhRMA's continued inclusion of El Salvador, she added, was the lack of any action against Laboratorios Lopez, the local pharmaceutical manufacturer allegedly responsible for most of the piracy of US drugs. (NOTE: Laboratorios Lopez is owned by a former member of COENA, the executive committee of the center-right ARENA party, who maintained very close ties to the previous ARENA governments. END NOTE.)

**¶111. (U)** The Salvadoran Radio Broadcasters Association (ASDER) agreed to a first-ever deal with rights holder representatives to pay royalties for music broadcasts on the radio. ASDER says it has paid over \$50,000 so far to the rights holders.

#### COMMENT AND RECOMMENDATION

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**¶112. (U)** El Salvador has continued with reforms to comply with CAFTA-DR and other IPR commitments, including implementing data protection for agricultural chemicals in the last year. Enforcement actions are comparable to 2008, despite a significant

increase in other crime, such as murder and extortion, which have diverted some resources away from IPR enforcement. Given the continued commitment of the Government of El Salvador to IPR protection, Post recommends against including El Salvador in the 2010 Special 301 Watch List.

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